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Criminal Intent

James Flaherty
Cornell Law School

Thesis

on

Criminal Intent

by

James F. Flaherty,

Cornell University,

School of Law,

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It is my purpose to treat of criminal intent, as an element in the criminal deeds, of one, who is responsible therefor before the law.

It is necessary, at first, in order to deal with the subject clearly and concisely, to get a definite idea of what criminal intent or malice (which are, according to the weight of authority, synonymous) is; and, secondly, it is equally essential; that we clearly discriminate between criminal intent or malice and other terms, which are often used, interchangeably, with it and for it i.e. will and motive.

Criminal intent or malice has been defined, in various ways, by the text-writers and jurists; but all the definitio

tions seem; either too narrow to include many instances of criminal intent, recognized by the courts; or too vague and imprecise to be, with safety, adopted; and it is with some serious misgivings that I submit the following indications, rather than a definition, of the term; criminal intent or malice is a design to violate the law.

Criminal Intent Distinguished from Will and Motive.

Criminal intent differs from will though they are closely related and almost inseperably connected. Intent precedes the will but will may follow and succeed the intention instantaneously or years may intervene between them.

We intend an act by fixing our mind upon it and thinking of it as one which will be performed when the time comes and when the time comes, if it ever does the act is willed; Will is always ~~is always~~ followed by motion unless the body be physically incapable. Motive is that which incites or stimulates to action. It is no part of the

crime also is important; only as being a comparatively reliable, index to the animus or spirit of an act; though it often occurres that there is a crime ~~committed~~ committed with no visable or ascertainable motive. Criminal intent or malice, then, is the animus or spirit, in which, an unlawful act is done; will is that which immediately dictates the commission; while, motive is the reason for the commission; or the object sought to be obtained thereby. Malice or criminal intent is, not only, found; where the mind is actively, or positively at fault: but also where the mind is passively or negatively to blame; ie. where there is a culpable or criminal inattention; a common example of which

would be manslaughter by a physician, who has shown gross incompetency, in the treatment of a deceased person. Here the criminality consists, in wilfully incurring the risk of causing loss or suffering to others; so in fact the malice is traced only one step farther back. Criminal intent is either express, or where one person wilfully kills another, through hatred or revenge; or implied, as where one wilfully strikes a perfect stranger, against whom he could have had no previous enmity, or malice, or deliberate design to kill. but here there is a wilful doing of a wrongful act, without a lawful excuse; and the criminal intention is an inference of law resulting from the doing of the act:

or rather consists in the intentional violation of the law, which inhibits the act; and which said law the actor is conclusively presumed to know.

The gist of this classification is; that in the first case there is an express motive present; while in the second there is no revealed motive.

General Rule and Exceptions.

On the early period of the common law, only such acts were deemed criminal, which had in them a vicious element of a malicious intent; and indicating some degree of moral turpitude, as Lord Abinger says: "In order that the man be guilty the mind must be guilty".

"Actus non facit reum nisi mens sit rea" was a maxim of almost universal application at common law, and the same doctrine is still reiterated by learned judges and eminent text writers.

This doctrine is clearly logical; and that it is perfectly consistent with natural justice cannot be denied; but logic and justice are not always law: for where, as in the present

case, the public weal is jeopardized, or involved, the liberties & rights of the individual are freely sacrificed, as peace offerings to this great favorite of the law.
The principle may have met the needs of the law, in the early stages of our jurisprudence, when society was comparatively simple; but as it develops new relations and complications arise, which necessitates a departure, from this ancient and ethical rule; inorder to protect society, in general, from the impositions of selfish and designing individuals.
It is indeed true, in general, that at common law, in order to constitute a crime, there must be an act, and contemporaneous with it, a criminal intent; and this

rule still exists, wherever, it has not been changed or abrogated by statute: but, as the common law of crimes has never obtained, in some of our state, and never was recognized by the federal courts; and has been abolished in nearly if not all of the states of the Union; the rules of common law on this subject are of no practical importence.

The power of the legislature to eliminate criminal intent; as an essential to crime, is indisputable; and has never been seriously questioned, and the greatest difficulty, in dealing with this subject, is encountered, in the construction of statutes, which, neither expressly dispenses with, nor requires it, as an element of the crime

which it prescribes.

Where a statute declares; that such and such acts are criminal; if "maliciously" or "wilfully" done; then as a matter of course, criminal intent is required to constitute a violation of the statute: or where the statute in express terms, eliminates the intent; there is then no difficulty in passing upon the question. But many of the penal statutes simply declare the act criminal, and the difficulty, which has been experienced in determining; whether a criminal intent was necessary, or not, under such statute, is emphatically vouched for, by the voluminous amount of dicta and text authority diametrically opposed; and flatly contradict-

ory to each other: and the great number of cases seemingly in hopeless confusion. One line of holding, on a statute, which unqualifiedly declares the commission of an act criminal, that a criminal intent was necessary; notwithstanding the absolute terms of the statute: another class of decisions hold, under a similar statute, that the intent was immaterial: and we find these two classes of cases in the same state; and in nearly every state with perhaps the exception of Georgia and Indiana, which cling to the old common law principle: i.e. "There can be no crime without a criminal intent."

Now these two classes of cases, at first

view, appear irreconcilable upon any rational principle; but nevertheless such is not the case; there is a principle underlieing all of these cases, upon which, they were; or ought have been decided; and, upon which, they all harmonize, with perhaps a few exceptions.

The principle is one of public policy; and resolves itself into a question of statutory construction. None of the cases can have legitimately, any other basis.

They are not the products of any of the general maxims of civil, or natural law. On the contrary; each set of cases is, or should have been, the result of a judicial ascertainment of the mind of the legislature, in the given instance

In such investigations the dictates of natural justice, such as: "There can be no crime without a criminal intent", can not be the ground of a decision; but are merely circumstances of weight, to have their effect, in the effort to determine the legislative purpose.

As there is undoubted competency in the law-maker, to declare an act criminal irrespective of the knowledge or intent of the doer of such act; there can be, of necessity, no judicial authority having the power, to require, in the enforcement of the law, such knowledge or motive, to be shown.

In such instances, the entire function of the court is to find out the intention

of the legislator; and enforce the law in absolute conformity to such intention; and in looking over the decisions on the subject; it will be found, that in the carefully considered adjudications, this inquiry has been the judicial guide; and naturally, as wont in such inquiries, the decisions have fallen into two classes; because there has been two cardinal considerations of directly opposite tendencies influencing the minds of the judges; the one being the injustice of punishing unconscious violators of the law; and the other, in view of the public utility; of punishing at times that very class of offenses.

In order to discriminate more clearly

between the two lines of decisions; which have been mentioned, it might be well to examine a typical case of each class, both of which, are recent decisions by the N.Y. court of appeals.

Peo. v Kibler 106 N.Y. 321 was a prosecution, under a statute, prohibiting the sale of milk; which fell below a certain standard. It was held; that ~~all that was~~ required to constitute the offense was to show a sale of milk, falling below the prescribed standard, and coming within the definition of adulterated milk; and the fact; that milk was from a healthy cow; and not known to be below the standard; and unadulterated; and that the defendant acted in perfect good faith;

was inadmissable and immaterial, as a matter of defense.

Peo. v Stevens 109 N.Y. 159 was a prosecution under § 467 of the Penal code, for entering on land without lawful authority, and erecting a building thereon; and although the provisions of the code are absolute, in terms; yet the court held that a criminal intent was essential to constitute the offense, and evidence of good faith; and that the defendant acted under advice of counsel; ect were admissable.

These two decisions; construing acts of the same legislature, of substantially the same phraseology; one holds a criminal intent necessary; the other eliminates it entirely;

yet both are law in New York; and are not inconsistent with each other.
The apparent discrepency disappears; upon a thorough consideration of the objects of the different acts, which are thus construed; and the abuses, which each is designed to correct. The latter being designed to protect private rights and property; while the former is in the nature of a police power regulation, and imposes a criminal responsibility, without, or, irrespective of a criminal intent. The purpose being, to require a degree of diligence for the protection of the public, which would make violation impossible, without incurring the penalty. If this distinction is kept clearly in mind; these two conflicting branches of the law present no serious difficulty.

General criminal Intent.

The doctrine of general criminal intent, is one, which presents not a little difficulty: and one which now is; or soon must undergo a change; for the doctrine that has been handed down to us from the common law, and to which we still cling is not only inconsonent with reason but manifestly unjust.

The subject though important, as it is, has not often been before the courts; and therefor has received very little treatment at the hands of the judges; but is still wrapt in the misty vales of speculation. and sophistry, drawn about it by careless commentators.

It may be laid down as a general

rule; that general criminal intent is all; that is necessary to accompany an act to make it a crime: but this rule is subject to some modifications and qualifications.

The famous and often quoted proposition of Lord Coke: "That where a man is perpetrating or attempting to perpetrate a felony, unintentionally kills another; such killing is murder" [illegible]

"If the unintentional killing was done, in attempting a misdemeanor; it is manslaughter" are subject to serious criticism. For suppose one to shoot at another, with whom, he has had a hot dispute; if he hits and kills him; it is manslaughter; but suppose he misses him but hits a by-

slander and kills him; is the killing of the latter manslaughter or murder? According to coke, it would be murder; but in coke's time, it made very little difference; since both offenses were punishable by death and forfeiture of goods.

In our time; when such a disparity exists between the punishment of the two offenses we should not follow this doctrine, which originated while the difference was merely nominal; and it has been recently held in Texas; that homicide, under the above circumstances, would not be more penal; than that intended (Ferrell v State 43 Tex 503). And again; suppose a man to be hunting in the forest, he fires his gun at some game; that it is feremias-

ible to shoot; the ball strayes from the mark, and kills a man, whom the hunter did not see; and was not aware of his presence; of course this would be accidental and excuseable homicide: but suppose instead the hunter had discharged his gun, at game the killing of which, was a misdemeanor, at that time of the year; and the same unforseen and unfortunate result ensues, would this be manslaughter? It would according to coke; but not in the forum of conscience, nor by the dictates of common sense. From the foregoing illustrations, it is apparent; that there is an exception or distinction; in the doctrine of general criminal intent, which has ~~not~~ not been,

sufficiently recognized in the law and which has been, indeed, sometimes wholly ignored.

It would not be wrong to describe this distinction; as a distinction between the quantity and the quality of the intent. It is established law, and sound reason; that, if a man does an act, which produces what may be fairly described as a necessary consequence as any person, of ordinary intelligence, doing the act would, with due diligence, necessarily foresee; it is as though he had intended that consequence; although that consequence was not the purpose; or motive of the action. In the language of the law, (which

, if not perfectly logical, is practically convenient) he did intend the consequence.

Where one throws a missile from the roof of a building into a crowded street; or fires a gun into a street; or place where people customarilly are; having no particular design to hit any one; but the hitting was the natural and probable consequence of the act. The probable consequence was, necessarily, within his contemplation and was recklessly disregarded. There was enough intention to make malice; though the intent was not coupled with a purpose.

But on the other hand; if the only thing intended is altogather diferent from the

consequences which actually follow; where the actual consequence is not only beyond the purpose, but beyond a reasonable contemplation of the person doing the act; where it is not only undesigned but is not such a consequence, as he may be fairly held to have foreseen as probable.

Then, no intention to produce the consequence can be rightfully attributed; as the act cant be said to be done maliciously.

Here however, a qualification arises, which turns upon the quality, or nature of the intent. If the accused persons in the hipothetical cases above suggested could fairly be held to have

in contemplation, that their wrongful acts, would probably cause the loss of life; they could consistently be held guilty; although the precise loss of life was not that, which he contemplated.

The quality or nature of the intent answers to the effect produced; or the consequence, which follows is of the same nature and quality with that intended; though the precise operation is different.

There is not a mere general intent to do an unlawful act; but there is an intent to do an unlawful act, and produce an unlawful consequence of that particular kind, in fact done

Criminal Intent alone a crime.
It is, indeed, true in general, that to constitute a crime, there must be an act, and contemporaneous with it, a criminal intent; but this is not always true, using the words in their ordinary sense, and in some cases, it is not true, at all. As we have seen, it is not true; that there must, always, be a criminal intent and it is equally untrue, that there always must be an act, using the words in their ordinary sense, to constitute a crime.

To constitute a misprision, it was not necessary, that there be an active concealment; but only an omission to inform

and an intent to conceal. So at common law, it was treason to immagine, or intend the death of the King.

To have in possession is not an act; yet to have counterfeit money in possession, is a crime; if there is coupled, with the possession a criminal intent to pass the same.

Proof and Presumption of Criminal Intent

Intention being a state of mind internal and invisable; it is impossible to ascertain its condition; except through outward manifestations, which serve to indicate, more or less clearly, and conclusively, the particular intention; "Exteriora acta, Animæ secreta indicant".

The force of inference; says Stark; "Results from the consideration, that the intention of a rational agent corresponds with the means, which he employes, and; that he intends the consequence, to which his conduct naturally and immediately tends.

Formerly therefore, when parties were not competent witnesses, the usual and in general the only way, of proving intent; was by evidence of such conduct; or of such outward acts and circumstances as tend directly, or indirectly, to show the particular intent.

But, where the parties are allowed to testify; it is now generally held; that intention is in a certain sense, a fact to be proved, as any other fact and when material a party may testify; as to his own intention.

This seems in accordance with common sense; for no one can tell better what, an act was intended to accomplish, than the party, who did the act.

Of course, such evidence may not be of the greatest weight; but it ought never the less be admitted, in proper cases and taken for what it is worth.
Such evidence was excluded at common law; because the parties were not competent witnesses in their own behalf, regarding any subject; but the reason for such a rule having ceased the rule itself should cease.
There are thus, two general modes of proving intent there are limitations however, on each; and it may be well to consider them in detail.
First; to what extent and in what cases; evidence of conduct and surrounding circumstances is proper.

Second; when and under what circumstances; a party may testify to his own intent.

The first mode of proving intent is founded upon experience, gained by a study of human nature; where by it is found; that all men are, largely, influenced by the same motives; and that certain acts indicate certain intentions.

Therefore proof of such acts are, circumstantially at least, proof of the intention, which usually accompany them.

The inference, to be drawn from the acts and circumstances, is usually one of fact for the jury to determine.

But there are some instances; where as

experience has shown; there can be but one reasonable inference, which of necessity arises from the facts, as they stand otherwise unexplained. In such cases, the law itself fixes and determines the inference, which is called an inference of law.

Thus the rule is firmly established, that every person is presumed to contemplate the natural and ordinary consequences of his own acts; thus from the uttering of a forged document, the law presumes an intention to defraud the person, who would be naturally affected thereby; so where one sets fire to a building, the presumption is that he intended to destroy it: and again, where

a man kills another by the voluntary use of a deadly weapon, the law presumes that the killing was intentional. In such cases it may be said — res ipsa in se dolum habet — the acts are evil & show a wrong intention in themselves; but in most cases the intention is not so clear or so conclusively shown, that the law itself can draw the inference; and it is necessary to prove acts and circumstances, from which, the court or jury may draw the inference, as a fact; as said in a recent case Burk v St. 71 ala. 377 "Intention is an inferential fact to be drawn by the jury, from proven attendent facts and circumstances.

Then, the question arises what are the attendant facts and circumstances, that may be properly given in evidence? It may be stated, generally, that all the attendant, and surrounding facts, and circumstances, tending directly or indirectly to throw light on the intention may be given in evidence; unless excluded by some other rule of evidence, applicable to the particular case.

It is also stated by Stevens in his Digest of the Law of Evidence; that where there is a question, whether an act was done accidentally or intentionally, the fact that the act formed part of a series of similar occurrences, in each of which, the person doing the act

was concerned; is deemed to be relevant. So, evidence of acts contemporaneous with the principle transaction, may often be admitted, to show criminal intent; and it has been held; that the manner of one accused of passing counterfeit money, at the time of passing it, may be shown; as tending to prove guilty knowledge and intent.

Not only are contemporaneous acts and circumstances, allowed to be shown; as explanatory of the intent; but other acts of similar character or done with a similar intent; although committed, before or after, the doing of the particular act, may often be shown in evidence; for the purpose of determining

the animus.
But, where subsequent facts are relied on they must be shown to have some intimate connection with the principle facts.
It was, at one time, much questioned whether, if the evidence of other facts offered to prove intent, at the same time proved the commission of another crime that fact did not render it inadmissable; but the law now seems to be well settled; that such fact alone will not render it incompetent, if it is otherwise proper.
As to the second mode of proving intent — By the direct testimony of the accused; the general tendency seems

to be, to extend the rule to all cases where criminal intent is an essential ingredient in the offence; and where the party is a competent witness in his own behalf. Thus it has been held; that in a criminal prosecution for obtaining goods under false pretenses, the evidence of the defendant that he did not receive the goods with any intent to defraud, or cheat is competent. So, in a prosecution for larceny, defendant may testify; as to what his intent in taking the goods ect.

Though, it may not be safe to lay down the rule, that it is always admissable; Yet as has been before stated

the general tendencies indicate; and there seems to be no good reason to the contrary; that where the intent in which the act was done, is material and where the party is a competent witness in his own behalf, he may testify as to what his intent was.

Yet, this evidence is not of a high or convincing character, owing to the circumstances, under which it is usually given, it should be received with a considerable precaution, and can be easily outweighed by the facts and circumstances surrounding the case.

Specific Criminal Intent.

Where the law makes a penal offense to consist of an act, combined with a particular intent; that intent is just as necessary to be proved as the act itself; and must be found by the jury. Then intent is the gist of the crime; and the presumption: "That every sane man must be presumed to contemplate and intend the necessary, natural and probable consequences of his acts." though a very important circumstance in making the proof necessary to convict; is not conclusive or alone sufficient; and should be supplimented by other testimony.

Thus, inorder to convict one of the

crime "assault with intent to Kill"; proof of the act of assault alone would not be sufficient; for there is no presumption; that the assault was done with the intent to Kill; there must be some other proof of the specific intent but it need not be made by direct evidence but the intent may be inferred from the circumstances of the case; other than, the bare act itself.

James Flaherty.